

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROD EDDIE, PAULA EDDIE and McCLINTOCK
REALTY, INC.

Docket No. 07-CV-3457
(WP4) (MDF) (KMK)

Plaintiffs,

-against-

SCOTTSDALE INSURANCE COMPANY,

Defendant.
-----X

**RULE 56.1 REPLY
STATEMENT OF
UNDISPUTED FACTS**

Defendant Scottsdale Insurance Company ("Scottsdale") submit the following statement in reply to plaintiff's Rule 56.1 Counter-Statement of Facts ("Plaintiff's Counter-Statement") and in further support of Scottsdale's Rule 56.1 Statement of Undisputed Facts.

STATEMENT OF FACTS

In Plaintiffs' Counter-Statement, they purport to cite to "facts" or "evidence" in the record, the subject matter of which are either (i) grossly mischaracterized, (ii) wholly unsupported by the record and unrelated to the specific fact, and/or (iii) purely speculative in nature. Scottsdale hereby replies to those paragraphs of Plaintiff's Counter-Statement that contain the aforementioned abuses:

Plaintiffs' Counter-Statement To Defendant's Statement No. 24

24. Plaintiffs admit to the contents of this paragraph but purport "that there was a break-in or break-ins at approximately three weeks to one month before the fire," and "[a]s a result of the break-in, the back door of the house appeared to have been kicked in and the front door was open." Although Mr. Eddie testified that it appeared someone may have broken into the home after the last of the tenants moved out (see Exhibit "D," p. 51, lines 12-23, p. 54, lines 1-16), he admits that he did not observe anyone inside the home (see Exhibit "F" p. 25, lines 13-15). Therefore, the "fact" that there was a "break-in" or "break-ins" is a mischaracterization of the testimony, is unsupported

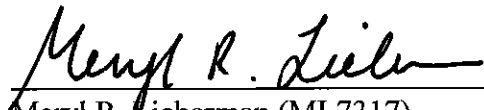
by the record and is purely speculative in nature.

Plaintiffs' Counter-Statement To Defendant's Statement No. 31

31. Plaintiffs admit to the contents of this paragraph but purport that "there is evidence that someone entered the premises shortly before the fire." Again, although Mr. Eddie testified that it appeared someone may have broken into the home after the last of the tenants moved out (see Exhibit "D," p. 51, lines 12-23, p. 54, lines 1-16), he admits that he did not observe anyone inside the home (see Exhibit "F" p. 25, lines 13-15). Thus, any "evidence" that "someone entered the premises," is unsupported by the record, a mischaracterization of the cited testimony and purely speculative in nature.

Dated: Hawthorne, New York
May 9, 2008

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CERTIFICATE OF SERVICE

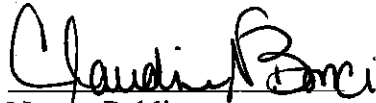
I, Michelle Manzares, certify that on May 13, 2008, I served a copy of a **RULE 56.1 REPLY STATEMENT OF UNDISPUTED FACTS** upon the attorney(s) for the respective party(ies) in this action, at the address listed below, such address designated by said attorney for that purpose via **UNITED STATES POSTAL SERVICE**, by depositing same in a properly addressed wrapper, in an official depository under the exclusive care and custody of United States Postal Service.

TO:

Basch & Keegan, Esq.
Attorneys for Plaintiff
Office and P.O. Box Address
307 Clinton Avenue
Kingston, New York 12402
Tel. No. (845) 338-8884


Michelle Manzares

Sworn to before me this
13th day of May 2008


Notary Public

CLAUDINE N. BONCI
Notary Public, State of New York
No. 01BO5015058
Qualified in Westchester County
Commission Expires July 12, 2011